



July 25, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, DC 0554

**Re: Ex Parte Presentation, WT Docket No. 08-7**

Dear Ms. Dortch:

On July 21, 2016, CTIA representatives met with Wireless Telecommunications Bureau Chief Jon Wilkins and members of the bureau with regard to the above-captioned proceeding (meeting attendees are listed in the Attachment A to this letter).

CTIA highlighted that the text messaging ecosystem is the most trusted and “least polluted” communications medium because text messaging providers have actively managed their platforms to protect consumers from SPAM or nuisance messages. Threats to messaging are growing, however, and the Commission should reject Twilio’s call for imposing Title II common carrier regulation on SMS, which would effectively invalidate the consumer protection measures that prevent massive quantities of unlawful and unwanted mobile messaging from reaching and harming consumers. Indeed, 22 State Attorneys General responded to Twilio’s petition by urging the Commission to refrain from any change that risks increasing the number of spam text messages sent to consumers.

CTIA also demonstrated that SMS is an information service, not a telecommunications service, because of the technical characteristics of SMS, including store-and-forward operations, and processing that changes both form and content of messages. These technical characteristics are the hallmarks of information service functions. The D.C. Circuit’s decision in *USTelecom v. FCC* reinforces the view that SMS is an information service. Moreover, imposing Title II here would create artificial and unsupportable distinctions between SMS and email and Over-The-Top (OTT) messaging.

CTIA also relayed that it is convening messaging stakeholders to find ways to further enable new mass messaging business models while safeguarding consumers against a



wave of unwanted messages. This process is ongoing. CTIA's presentation is included as Attachment B.

In addition, CTIA notes that businesses and consumers can benefit from innovative uses of text messaging services through, for example, toll-free telephone numbers (TFNs). CTIA believes the holder of a 8XX telephone number should have the ability to authorize 8XX telephone numbers for text. Some stakeholders have raised concerns about the existing processes used to text enable TFNs, and CTIA has engaged stakeholders to encourage solutions that facilitate innovative text messaging services that benefit TFN customers and consumers alike.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann  
Vice President, Regulatory Affairs  
CTIA

Enclosures

## **ATTACHMENT A**

### **CTIA Attendees**

Tom Power  
Scott Bergmann  
Matt Gerst  
Adam Krinsky, outside counsel

### **FCC Attendees**

Jon Wilkins  
Jim Schlichting  
Joel Taubenblatt  
Michael Janson  
Pramesh Jobanputra  
Jack O'Gorman  
Jennifer Salhaus  
Paroma Sanyal  
Mary Claire York  
Matt Warner

**ATTACHMENT B**

# Twilio Petition for Declaratory Ruling

Presentation to Wireless Telecommunications Bureau

July 21, 2016

# Messaging: Today's Most Relevant Medium



- Messaging is the most trusted communications platform.
  - Messaging: 90% “open rate” and generally opened within 15 minutes.
  - Email: 20-25% “open rate” within 24 hours.
- Messaging is viewed as a way to break through.
  - “Text is personal. Text stresses immediacy. Text is spam-free.”
    - Voxiva (Text4Baby) Comments

# Messaging's Place in the Apps Ecosystem

- SMS/MMS is just one element of a broader messaging ecosystem that includes over-the-top ("OTT") platforms.
- 6+ of the top 10 most used apps globally are OTT messaging apps.

## Messaging Apps = Top Global Apps in Usage + Sessions



See Mary Meeker, Internet Trends 2015 – Code Conference, KPCB, <http://www.kpcb.com/internet-trends> (last visited Feb. 24, 2016).

# SMS's Place in the Messaging Ecosystem

- In 2014, OTT texting surpassed SMS in terms of volume.
- One app – WhatsApp – has 50 percent larger messaging volume than the entire SMS market.

## Messaging Leaders = Growing Fast... Building Expansive Platforms + Moats

### Selected Global Messaging Leaders



**WhatsApp** (launched 2009)  
 • *Fast messaging*  
 • MAU = **800MM**, +60% Y/Y, Q1:15  
 • Messages Sent / Day = **30B**



**WeChat** (launched 2011, China)  
 • *Messaging platform*  
 • MAU = **549MM**, Q1:15, +39% Y/Y



**Facebook Messenger** (launched 2011)  
 • *Messaging platform*  
 • MAU = **600MM**, +200% Y/Y, Q1:15



**LINE** (launched 2011, Japan)  
 • *Messaging platform*  
 • MAU = **205MM**, Q1:15  
 • Messages Sent / Day = **13B**, +30% Y/Y  
 • Revenue = **\$922MM**, +70% Y/Y



**Snapchat** (launched 2011)  
 • *Ephemeral messages, pictures and videos*  
 • DAU = **100MM**, 5/15  
 • Story Views / Day = **2B**



**KakaoTalk** (launched 2010, Korea)  
 • *Messaging platform*  
 • MAU = **48MM**, Q1:15  
 • Messages Sent / Day = **5.2B**  
 • Revenue\* = **\$853MM**, +19% Y/Y

@KPCB Source: Company public filings, earnings transcripts, websites, statements to the press. Revenue figures are annualized as of most recent quarter. \*Revenue of Daum Kakao.

49

See Mary Meeker, Internet Trends 2015 – Code Conference, KPCB, <http://www.kpcb.com/internet-trends> (last visited Feb. 24, 2016).



# Messaging and Consumer Protection



- “Least polluted” communications medium
  - Not an accident or luck; requires active management.
  - Industry practices to combat spam and unwanted or harmful messages blocked an estimated 1.3 billion to 1.6 billion SMS messages in 2015.
- Protects consumers by placing limits on commercial messages
  - World’s largest messaging service, OTT provider WhatsApp, bans all commercial solicitations, ads, and unsolicited messages.
    - GroupMe also bans messages that contain commercial content as part of its Terms of Service.
  - Short Codes enable mass messaging subject to pre-clearance.
  - SMS uses spam filters; SMS-based “hybrid models” are subject to them.

# Messaging Technologies

- P2P (person-to-person) – 10-digit number messaging
  - No concern that message will be denied because of its content.
  - Little risk of spam as no human can send 1000s of messages/second.
- A2P (application-to-person) – automated mass messaging
  - Short Codes
    - Pre-clearance shields consumers from unwanted traffic that A2P enables.
  - A2P over SMS: “hybrid models” like Twilio
    - New opportunities, but no pre-clearance risks unwanted messaging.

## Widely Recognized Growing Threats to Messaging

- “Always-on communications, inherent trust in the channel, high open rates, and six billion subscribers are not lost on those with ill intent.”  
– Cloudmark (2015)
- “As more users rely on their mobile devices, more spam, scams and threats are tailored to these devices.”  
– Symantec (2015)
- “Why do spammers love Twilio so much, it’s because they use long codes for messaging” – i.e., it sends mass messages through the SMS system with no ex ante content review.  
– Derek Johnson, Tatango (2014)

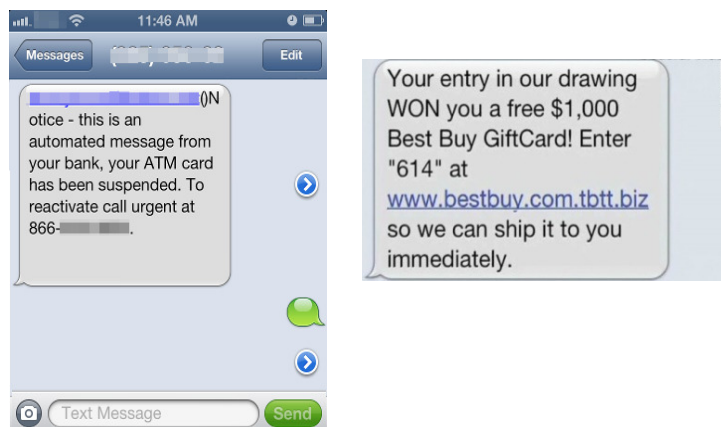
## Widely Recognized Growing Threats to Messaging

- “Text messaging today is not excessively polluted by spam communications thanks to the filters used by the wireless carriers. . . . Text messaging spam would be a major annoyance to consumers and would be a vehicle for fraudulent activities. We believe, and our citizens desire, that this unique wireless service should be kept ‘spam free.’ We therefore urge the Commission to maintain the status quo, rather than imposing new regulatory structures that would open up the spam floodgates, which our citizens would have to address.”

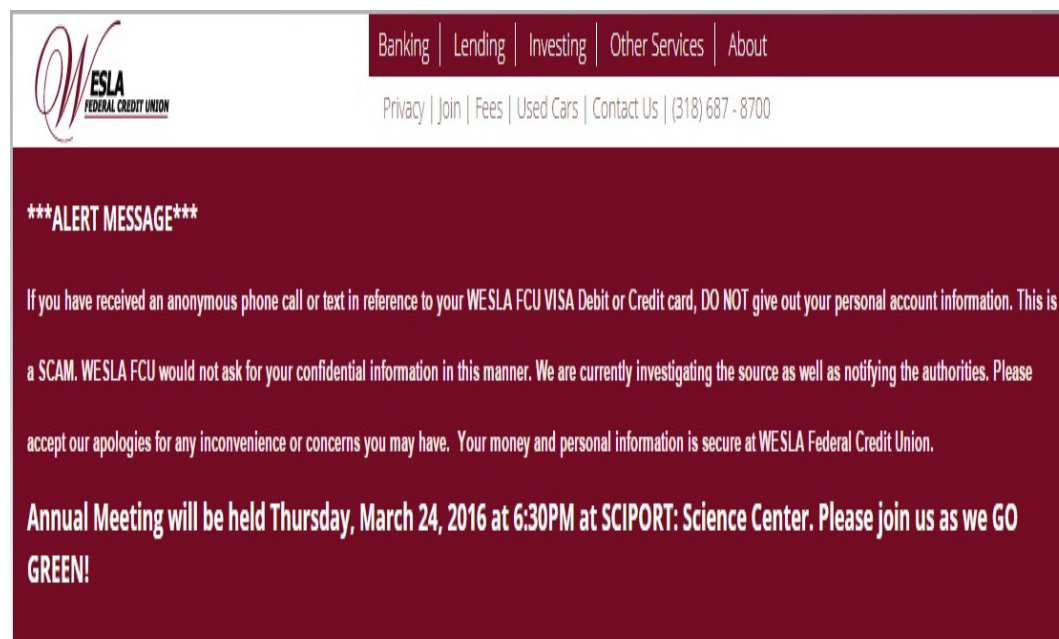
– Joint Letter from Bipartisan Group of 19 State Attorneys General (2015)
- The FCC is “encouraged by carrier efforts to implement protections against unwanted text messages....”

– FCC TCPA Declaratory Ruling (2015)

# Examples of the Growing Threats to Messaging



See CTIA Comments, WT Docket No. 08-7, n.41 (Nov. 20, 2015).



See Wesla Federal Credit Union, <https://wesla.org/> (last visited Mar. 2, 2016).

# Twilio Petition

- Seeks Title II treatment of SMS, essentially asking the FCC to invalidate consumer protection measures that prevent massive quantities of unlawful and unwanted mobile messaging spam from reaching and harming consumers.
- Focus is on A2P mass messaging campaigns over the SMS platform and outside of Short Codes.
  - No allegations of “blocking” of P2P traffic or even A2P traffic consistent with human-to-human messaging (e.g., an automated response).

# SMS is Not Telecommunications Service



- SMS is an information service.
  - SMS's store-and-forward function, and processing that changes form and content of messages, render it an integrated information service.
  - Like email and voicemail, messaging is “asynchronous,” as a person can send a message and the recipient need not be available at that time.
- The record contains no meaningful showing of how SMS and Short Codes are telecommunications services.

# USTelecom v. FCC Does Not Change SMS's Status As An Information Service



- The D.C. Circuit affirmed the FCC's conclusion that the transmission involved in BIAS is separate from the information processing.
- That rationale reinforces the view that SMS is an information service:
  - The transmission component of SMS is not available to consumers on a stand-alone basis. (OTT messaging apps ride atop BIAS, not SMS.)
  - The messaging component of SMS cannot be disentangled from the transmission component.
  - Carriers do not advertise any characteristics of the transmission component separately from the service component.



# SMS is Not CMRS

- SMS does not involve key elements of CMRS.
  - SMS does not provide the ability to reach a vast swath of users of the public switched network – few wireline phones can send or receive messages.
  - SMS uses private network facilities (SMSCs) separate from the PSTN and does not interconnect with the PSTN.
    - Similar to cable television and cable Internet, telephone and text go through the same pipes, but are not the same service.
- With this lack of ubiquitous access, SMS cannot be deemed a functional equivalent of CMRS.

# USTelecom v. FCC Does Not Change SMS's Status As PMRS



- The D.C. Circuit affirmed the FCC's conclusion that BIAS allows interconnection with virtually all endpoints of the "public switched network."
  - Court found that VoIP-enabled BIAS can reach all NANP endpoints as well as all IP endpoints.
  - The court viewed removal of the word "all" from "all other users on the public switched network" to be a "purely conforming [change] with no substantive impact."
- That rationale reinforces the view that SMS is an information service:
  - SMS traffic generally cannot be delivered to wireline phones (still close to 75 million lines).
  - Thus, SMS is not interconnected under the FCC's definition – a definition that was central to the court's decision.

## Title II Would Create Arbitrary Distinctions

- For regulatory classification purposes, SMS is one and the same as email and OTT messaging and must be treated the same.
  - Email
    - Email and SMS both rely on store-and-forward and processing capabilities that are key indicia of an information service. The Open Internet Order confirmed email is an information service.
  - OTT Messaging
    - There is no basis to subject SMS providers representing a minority share of the messaging market to common carrier requirements that don't apply to their highly successful OTT competitors.

# Title II Would Undermine Consumer Interests



- Under a common carriage regime, wireless providers would be hamstrung to filter spam and provide a safe A2P experience through Short Code review.
- Sections 201 and 202 could preclude providers from halting traffic that is unwanted by consumers.
- With more spam, messaging would become less trusted, less immediate, less personal.
  - “If carriers are unable to filter out scammers and other unsolicited messages, we will have a harder time activating our member base to volunteer.”  
– dosomething.org Comments

# CTIA: Convening Messaging Stakeholders

- Working Group involves stakeholder from entire messaging ecosystem (e.g., mobile wireless providers, OTT messenger companies, toll-free messaging).
- Goals
  - Enable new mass messaging business models.
  - Safeguard consumers against wave of unwanted and unlawful messages.
  - As new models are introduced, there are bound to be instances where traditional filtering affects these campaigns.
- Working on consensus-driven solutions.
  - Messaging Classification, Spam, Messaging Guidelines

ctia Everything™  
Wireless